IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.517 OF 2006

IN

SUMMARY SUIT NO.632 OF 2006

...

Pheruram Bhiki Kewat ...Plaintiff

v/s.

Brijbhushan s. Dubey

and anr. ...Defendants

...

Mr.R.K.Desai for the Plaintiff.

Mr.Pandey i/b Pandey & Co. for the Defendant No.1.

...

CORAM: D.K.DESHMUKH, J.

DATED: 23RD JANUARY,2007

P.C.:

The case of the Plaintiff is that the Defendant No.1

had taken loan from the Defendant No.2. The present Plaintiff was the guarantor. Because the Defendant No.1 did not pay to the Defendant No.2, the Plaintiff paid that amount and for recovery of that amount present suit has been filed.

2. There is no written contract between the Plaintiff and the Defendant No.1. According to the learned Counsel for the Plaintiff the document at Exh.B is a contract. The document at Exh.B is the application for loan. It is not a contract. It is also not signed by the Plaintiff as a guarantor. He has signed it as a witness. One does not find from the document at Exh.B as to what were the terms and conditions on which the loan was advanced. One does not also find that according to this contract, loan was recoverable from the Plaintiff, if the Defendant No.1 does not pay the loan to the Defendant No.2. As the suit is not based on any written contract, it cannot be tried as a summary suit.

3. The summons for judgment is, therefore, disposed of. Defendants are granted unconditional leave to defend the suit. Suit be transferred to commercial cause list. Written statement to be filed within

eight weeks from today.

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